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Public Prosecutor v Li Qian (W/N China)

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COURT OF APPEAL (PUTRAJAYA) — APPEAL NO B-05(LB)-471–12 OF 2016
ROHANA YUSUF, YAACOB MD SAM AND RHODZARIAH BUJANG JJCA
4 APRIL 2018

C

Criminal Procedure — Appeal — Appeal against acquittal and discharge — Drugs found inside accused person's bag — Drugs concealed in bag — Whether accused person had knowledge of drugs — Whether accused person innocent carrier — Whether there was wilful blindness — Dangerous Drugs Act 1952 s 39B(1)(a)

D

The respondent was charged and tried in the High Court for a charge of trafficking in dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'), punishable under s 39B(2) of the same Act. The narration by the appellant ('the prosecution') was that the respondent arrived at the LCCT Kuala Lumpur International Airport from Hong Kong. The respondent went through the red lane of the customs to declare her belongings. She was directed by the Customs Officer, to scan her two bags. When her pull bag ('P26') was scanned, a suspicious image showed up. Upon further examination, white powdery substance, confirmed to be 1,394.3g of methamphetamine was found hidden behind the iron bar of P26. The trial judge, having found that the prosecution had established a prima facie case, ordered the respondent to enter her defence. In her defence, the respondent submitted that her boyfriend had told her to send one bag to Kuala Lumpur and it was him who bought P26 and had put all the respondent's personal items inside P26. As the respondent trusted her boyfriend, she did not check the contents of P26 and therefore, did not know it contained drugs. At the conclusion of the trial, the trial judge found that the respondent had succeeded in her defence, in raising a reasonable doubt, which eventually rebutted the presumption of knowledge under s 37(d) of the DDA. The respondent was acquitted and discharged. Hence the appeal by the prosecution.

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Held, dismissing the appeal:

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(1) The respondent's narration was quite impeccable and left no room for suspicion to impute any suspicion or curiosity on her part in order for the doctrine of wilful blindness to be invoked against her. The drugs were completely hidden in P26 and not visible. Even if the respondent were to open the content to check, she would not be able to see anything

suspicious because the drugs were hidden behind the metal pull of P26 and would not be noticeable to her even if P26 was opened. In fact, at the LCCT, the respondent chose to go through the red lane, which required declaration. This certainly did not show the conduct of a person with a guilty mind. Furthermore, based on the testimony of the prosecution witnesses, the respondent was completely calm and had given her full co-operation during the time when she was apprehended and had only shown panic and worry after she was told that they had found the incriminating drugs in P26 (see paras 32 & 35–36).

[Bahasa Malaysia summary

Responden didakwa dan dibicarakan di Mahkamah Tinggi atas pertuduhan mengedar dadah berbahaya bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'), yang boleh dihukum bawah s 39B(2) Akta yang sama. Naratif perayu ('pihak pendakwaan') ialah responden tiba di LCCT Lapangan Terbang Antarabangsa Kuala Lumpur dari Hong Kong. Responden melalui lorong merah kastam untuk mengisytiharkan barangnya. Dia diarahkan oleh Pegawai Kastam untuk mengimbas dua begnya. Apabila beg tariknya ('P26') diimbas, imej yang mencurigakan dilihat. Selepas pemeriksaan lanjut, bahan serbuk putih, disahkan sebagai 1,394.3g methamphetamine ditemui tersembunyi belakang belakang bar besi P26. Hakim bicara, setelah mendapati pihak pendakwaan telah membuktikan kes prima facie, memerintahkan responden membela diri. Dalam pembelaannya, responden menghujahkan bahawa teman lelakinya telah memesannya menghantar sebuah beg ke Kuala Lumpur dan teman lelakinya adalah orang yang membeli P26 dan meletakkan semua barangan peribadi responden di dalam P26. Oleh kerana responden mempercayai teman lelakinya, dia tidak memeriksa kandungan P26 dan oleh itu, tidak tahu ia mengandungi dadah. Pada penutup perbicaraan, hakim bicara mendapati bahawa responden berjaya dalam pembelaannya, dalam menimbulkan keraguan yang munasabah, yang akhirnya menyangkal anggapan pengetahuan bawah s 37(d) ADB. Responden dilepaskan dan dibebaskan. Oleh itu, rayuan ini oleh pihak pendakwaan.

Diputuskan, menolak rayuan:

(1) Naratif responden agak sempurna dan tidak ada ruang untuk mengesyaki untuk menimbulkan apa-apa kecurigaan atau rasa ingin tahu di pihaknya untuk membangkitkan doktrin kebutaan sengaja terhadapnya. Dadah-dadah tersebut disembunyikan sepenuhnya dalam P26 dan tidak kelihatan. Jikapun responden membuka kandungannya untuk memeriksa, dia tidak akan dapat melihat apa-apa yang mencurigakan kerana dadah tersebut tersembunyi di belakang bar besi P26 dan tidak akan kelihatan kepadanya walaupun P26 dibuka. Malah, di LCCT, responden memilih untuk melalui lorong merah, yang memerlukan perisytiharan. Ini sudah tentu tidak menunjukkan kelakuan seseorang

yang bersalah. Selain itu, berdasarkan keterangan saksi pendakwaan, responden amat tenang dan telah memberikan kerjasama penuh semasa dia ditangkap dan hanya menunjukkan panik dan kebimbangan selepas dia diberitahu mereka telah menemui dadah tersebut dalam P26 (lihat perenggan 32 & 35–36).]

Notes

For cases on appeal against acquittal and discharge, see 5(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 234–241.

Cases referred to

Leow Nghee Lim v Reg [1956] 1 MLJ 28 (refd)
Low Kian Boon & Anor v PP [2010] 4 MLJ 425; [2010] 1 MLRA 418, FC (refd)
PP v Abdul Rahman bin Akif [2007] 5 MLJ 1; [2007] 4 CLJ 337, FC (refd)
PP v Herlina Purnama Sari [2016] 2 MLJ 724; [2017] 1 MLRA 499, CA (distd)
Tan Ah Tee & Anor v PP [1980] 1 MLJ 49 (refd)
Teh Hock Leong v PP [2010] 1 MLJ 741, FC (refd)
Topaiwah v Salleh [1968] 1 MLJ 284; [1968] 1 MLRA 580, FC (refd)

Legislation referred to

Criminal Procedure Code s182A, 182A(1)
Dangerous Drugs Act 1952 ss 2, 37(d), 39B(1)(a), (2)

Appeal from: Criminal Trial No 45A-77–08 of 2014 (High Court, Shah Alam)

Nik Syahril bin Ab Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Tan Choon Hong (Choon Hong & Assoc) for the respondent.

Rohana Yusuf JCA (delivering judgment of the court):

[1] The respondent was charged and tried in the High Court at Shah Alam for a charge of trafficking in dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA 1952'), punishable under s 39B(2) of the same Act. At the end of the prosecution's case, the learned trial judge found a prima facie case being made out. The respondent was ordered to enter her defence. At the end of the defence case, the learned trial judge found the respondent had raised a reasonable doubt on the prosecution's case, proceeded to acquit and discharge the respondent.

[2] Dissatisfied with that decision the learned deputy public prosecutor

('DPP') filed the present appeal. We have heard the appeal and we have dismissed the same and affirmed the order of acquittal and discharge made by the learned trial judge. We set out below our reasons for doing so.

[3] The narration by the prosecution was that, the respondent arrived at the Low-Cost Carrier Terminal (LCCT) Kuala Lumpur International Airport on 11 November 2013 about 1.15am by Air Asia AK 1655 flight from Hong Kong. The respondent went through the red lane of the custom to declare her belongings. She was directed by the Customs Officer, Haris bin Abdul Rahman ('SP6') to scan her two bags. A handbag in brown colour carrying the brand name Curie ('P27') and a pull black bag with a brand name of American Tourister ('P26') were scanned at the machine detector 3. Customs Officer, Zamri bin Haji Omar (SP5) saw suspicious image in P26.

[4] The respondent was then directed to carry P26 to the Inspection Counter 3 for further examination. There SP6 directed the respondent to open the bag which was locked with a combination lock. SP6 found clothes and shoes inside P26. The respondent was directed by SP6 to remove the whole content. P26 was re-scanned and the suspicious image still appeared after the second scanning.

[5] The respondent was later taken to the Customs Office, *Cawangan Pemeriksaan Penumpang 2* for further examination. Five transparent plastic packets containing white powdery substance were found hidden behind the iron bar of the pull bag. Early examination of the white powdery substance was determined as illegal substance by SP6.

[6] SP6 then sent the respondent together with the items confiscated to the investigating officer, Omar bin Hamzah (SP9) for further action. All five plastic packets were later sent to the Chemist Department to be examined. The five plastic packets were found to contain methamphetamine with a total weight of 1,394.3g. The chemist report of the five plastic packets can be found in exh P25.

[7] At the end of the prosecution's case, the learned trial judge accepted the evidence of the chemist, Suhana bt Ismail (SP3) that the white powdery substance in the five transparent plastic packets contained 1,394.3g methamphetamine (P18). The learned trial judge found the respondent to have had actual physical possession of the drugs when she was caught with P26 containing the drugs as testified by SP5, SP6 and the Customs Officer Siti Nur Aisyah bt Kamaruzaman (SP7).

[8] The learned trial judge found the evidence as laid out by the prosecution was sufficient to show that the respondent was having custody and control and

possession of the drugs. The respondent was travelling alone at the material time, and she was caught with the incriminating evidence. The tag of the bag was also registered in the respondent's name. On these facts the learned trial judge found that the respondent knew what she was doing and had knowledge of the drugs.

[9] In his judgment the learned trial judge agreed that the element of possession, control and thereby knowledge had been successfully established, citing the various settled authorities by the Federal Court in *Leow Nghee Lim v Reg* [1956] 1 MLJ 28; *Public Prosecutor v Abdul Rahman bin Akif* [2007] 5 MLJ 1; [2007] 4 CLJ 337; and *Tan Ah Tee & Anor v Public Prosecutor* [1980] 1 MLJ 49. This finding was supported by the fact that the respondent was travelling all by herself from Hong Kong, she was seen pulling P26; she was in direct control of P26 which was under her charge from Hong Kong to LCCT KL and P26 was opened by herself upon direction by SP6.

[10] The learned trial judge observed that the respondent was carrying the drugs exhibit from Hong Kong to Kuala Lumpur which would invoke trafficking under s 2 of the DDA. The learned trial judge then found that the prosecution had established a prima facie case against the respondent. The learned trial judge called the respondent to enter her defence. the respondent elected to give evidence on oath. No other witness was called.

[11] The respondent had given her sworn evidence from the witness box. The respondent's version started with a request by her boyfriend by the name of 'Dan', a Nigerian, for her to come to Malaysia. The respondent came from Gewei village, Suichen in Jiangsu State in China. She met Dan in Guangzhou, China in September 2013. They became close with each other. She was a make-up artist. They agreed to delve in fashion business together. In the course of it, Dan requested for her identification card and passport in order to apply for visa. The visa was said to be necessary for the respondent to help Dan in his business. The respondent was found to be truly in love with Dan, by the learned trial judge.

[12] On 6 November 2013, the respondent came to Guangzhou to meet Dan and stayed with him for several days at his apartment in Guangzhou. Dan informed the respondent and discussed his fashion business, which attracted the respondent because she too loves fashion very much. As part of the business proposal, according to the respondent, Dan requested the respondent to send one bag of samples to his friend in Kuala Lumpur, in order to facilitate their fashion business. According to the respondent also, Dan had bought back a black bag for her to carry the sample. She said the black bag she carried contained the samples of clothing for the fashion business. Dan then put all the personal items of the respondent, inside the black bag to be carried by the

respondent to Malaysia. The respondent said she did not take any initiative to inspect the content of the black bag because Dan was her boyfriend and she trusted him enough.

[13] Initially Dan was supposed to come to Malaysia together with the respondent. To proceed on the journey, first they have to take a taxi to a hotel in Guangzhou, to catch a bus that will go to Shenzhen. At Shenzhen there will be a van that will go to Hong Kong airport. On 11 November2013, while waiting for a taxi to go to the hotel in Guangzhou, Dan received a phone call. Dan answered the call. After the phone call, Dan then told the respondent that he was not able to come to Malaysia with her, due to an emergency. Dan did not proceed with the trip to Kuala Lumpur. In the end the respondent had to travel by herself first to Guangzhou after that, by bus from Guangzhou to Shenzhen and then by van to Hong Kong airport. The respondent then continued her journey to Malaysia and arrived at LCCT, KL International Airport at about 12pm.

[14] Upon arrival at the airport the respondent, according to SP5 had passed through a red lane, a lane where customs' declaration is to be made. The picture in exh P17, shows clearly that the respondent was passing through this lane. When her black bag was scanned at the scanning machines, the Customs Officer informed the respondent that it contained unlawful items, and the respondent was then brought to a room for further examination.

[15] During the further examination by the Customs Officer, the respondent's hand phone (exh P27(3)) which used a Malaysian 'sim' card was ringing but the Customs Officer did not allow the respondent to answer the call. While giving her testimony, the respondent showed Dan's picture and informed that both of them were having intimate relationship. The respondent showed the short message service (SMS) from Dan indicating such romantic relationship between them. Dan had also sent the respondent a message informing her that 'When you arrive at Malaysia the taxi driver will help you call the hotel'. The respondent also informed the court that she had given her full co-operation during the examination and did not even try to escape. The respondent denied that she had any knowledge of the drugs and thereby denied having possession of the drugs.

[16] At the end of the defence case, the learned trial judge after evaluating the evidence by the prosecution and the defence as a whole as required under s 182A(1) of the Criminal Procedure Code, found that the respondent's version was so credible and had created a reasonable doubt on the prosecution's case. According to the learned trial judge the respondent's defence was not a bare denial or an afterthought. Thus, the learned trial judge found that the respondent had succeeded in her defence, in raising a reasonable doubt, which

eventually rebutted the presumption of knowledge under s 37(d) of the DDA 1952. A

[17] The learned trial judge reiterated that the defence of the respondent focussed on Dan as the main player who was then her lover. Dan's picture and SMS were still intact in the respondent's hand phone (exh P27(2)) since the respondent arrived in Malaysia. The learned trial judge opined that Dan was not a fictitious character, and if only the Customs Officer had further investigated the existence of Dan, surely the Customs Officer would agree that Dan existed and that he had played his role in putting the drugs found inside P26, which was later passed to the respondent to be carried. It was found to be reasonably acceptable by the learned trial judge that the respondent did not inspect the content of P26 which was given by Dan, because of that intimate relationship. Instead, the respondent just followed what was directed by her boyfriend, Dan. B C D

[18] The learned trial judge further supported his finding by the evidence of the prosecution's witnesses who said the respondent was calm while P26 was scanned, the respondent started to look worried only after P26 was further examined at the examination room and after she was informed that it contained unlawful items. That notwithstanding, the respondent still gave her full co-operation to the Customs Officer and never tried to escape. E

[19] The learned trial judge further elaborated in his grounds of judgment at p 26 that the defence of innocent carrier of the respondent was not fictitious or an afterthought. This was because the respondent had already informed the Customs Officer when she arrived at the airport that P26 was not hers. The Customs Officer also was showed the SMS given by Dan which stated; 'When you arrive at Malaysia the taxi driver will help you call the hotel'. From these evidence and taken these as a whole the learned trial judge inferred that P26 belonged to Dan and the respondent was only the carrier of it. F G

[20] The learned trial judge then found the defence had successfully, on a balance of probabilities, rebutted the presumption of knowledge under s 37(d) of the DDA 1952, and had therefore created doubt on the case of the prosecution. H

[21] The learned trial judge had referred to the act of the customs officer who prevented the respondent from answering her phone, as tantamount to a material loophole in the case of the prosecution. If that had been allowed the learned trial judge opined that the Customs Officer would be able to plan to trap the caller and to get him, or produce him before the court either as an accused person or a witness. I

[22] After evaluating the evidence in its entirety, the learned trial judge having found that the respondent had created a reasonable doubt on the prosecution's case, acquitted and discharged the respondent.

[23] In the petition of appeal learned DPP raised four following grounds:

(a) that the learned trial judge had erred in law and facts for failure to decide that the respondent was not an innocent carrier based on the facts and surrounding circumstances (refer to *Public Prosecutor v Herlina Purnama Sari* [2016] 2 MLJ 724; [2017] 1 MLRA 499);

(b) the learned trial judge had erred in law and facts after giving unreasonable consideration to the fact that the respondent and Dan were in love solely based on the information in the hand phone (P27(2)) while at the same time the respondent failed to give the details of Dan's profile and who was to be the last receiver of P26 in Malaysia;

(c) the learned trial judge had erred in law and facts for failure to conclude that whatever role played by Dan, the respondent's role would amount to trafficking in the context of s 39B(1)(a) of the DDA 1952; and

(d) the learned trial judge had erred in law and facts because the defence adduced by the respondent had failed to defeat the presumption of knowledge under s 37(d) of the DDA 1952.

[24] In essence, the appeal by the learned DPP, centres on the issue of whether the respondent, on the facts and circumstances of this case should be protected by her defence of an innocent carrier which will rebut the presumption of knowledge on her part. In this regard learned DPP relied and referred to the Federal Court decision in *Public Prosecutor v Herlina Purnama Sari* [2016] 2 MLJ 724; [2017] 1 MLRA 499, where the defence of innocent carrier was rejected on the basis that the accused in that case had every opportunity to check what she was carrying and that she should be reasonably suspicious of what she was carrying. In that case the accused was carrying a luggage bag. When it was opened there was a plastic bag containing two boxes of the impugned drugs. Thus the Federal Court viewed that if the accused had checked she would easily notice the two boxes. Further authority cited by learned DPP is the Federal Court decision in *Teh Hock Leong v Public Prosecutor* [2010] 1 MLJ 741.

[25] At the outset, it must also be pointed out that the law on the defence of innocent carrier is very facts sensitive. It depends on the test of what and how reasonable the accused had acted given the surrounding circumstances. Both knowledge as well as wilful blindness are more often than not inferred from the facts and circumstances of each case. As such even though some case laws and decisions can serve as useful guidance, it is nevertheless imperative to state that

because it requires an intense nature of factual inquiry, they cannot be comprehensive. Though in law the accused has no legal duty not to turn a blind eye but if he chooses to do so, it could be taken as an act of wilful blindness on his part, which in fact amount to actual knowledge in law.

[26] Thus whether or not a presumption of knowledge under the DDA is rebutted on a balance of probabilities will depend on the precise factual analysis of each case.

[27] In the present appeal the learned trial judge found the respondent testified as SD1 was a witness of truth as she had remained consistent and unshakened throughout the event as well as during the trial and her evidence was found to be credible. The learned trial judge had evaluated the evidence of the defence as mandated under s 182A of the Criminal Procedure Code and having heard the testimony of the respondent, the learned trial judge found her evidence credible and had accepted her as a credible witness.

[28] As a matter of legal principle, the appellate court should be slow to interfere with findings of facts by the trial court unless there is a plain and overriding error which affected the assessment of facts as enunciated in *Low Kian Boon & Anor v Public Prosecutor* [2010] 4 MLJ 425; [2010] 1 MLRA 418 and *Topaiwah v Salleh* [1968] 1 MLJ 284; [1968] 1 MLRA 580.

[29] The defence raised by the respondent had focussed on the role played by Dan which according to the learned trial judge, the existence of whom the investigation had failed to do more. Learned DPP stressed on the issue that the identity of Dan was not disclosed by the respondent both in her cautioned statement (D53) as well her testimonies before the learned trial judge. The learned trial judge saw the various messages in the hand phone of the respondent in exh P27(2) which he found to have supported the oral evidence of the respondent of their intimate relationship. Learned DPP criticised this finding, being a finding purely based on information in the hand phone whereas, the respondent was not able to even provide any other details on Dan.

[30] We are not in agreement with learned DPP. We note that in her examination-in-chief, the respondent when referred to her cautioned statement tendered as exh D53, at Q17 of her cautioned statement, said that upon her arrival at Guongzhou airport from her place, she was brought to the condominium where Dan lived. The place was described by her as Fu Hong Kondo, located in Wilayah Jiang Xia. She said she had also given the telephone number of Dan to the Customs Officer. In her re-examination she also said that the condominium where Dan lived had a CCTV in the lift, which would record her movement there.

[31] Learned DPP further stressed on the point that in concluding that the respondent had created doubt on the prosecution's case by rebutting the presumption of knowledge which then amount to raising a defence of innocent carrier, the learned trial judge failed to consider that the respondent had not taken any trouble to check what she was carrying in P26 despite having the bag with her at all the material time. It was submitted by learned DPP that the respondent cannot rely on her own wilful blindness to be protected by the defence of innocent carrier, as decided in all the authorities cited on this point.

[32] We agree with learned DPP that the legal principles on this issue is trite. That the defence of innocent carrier will be defeated by an act of wilful blindness. In this case the respondent was never cross-examined if she had checked the content of P26 before travelling or during travelling and why she did not do so. What we noted was that the way the drugs exhibit were concealed in P26, would not make the drugs easily noticeable upon checking. Thus, even if the respondent were to open the content to check, she would not be able to see anything suspicious because the drugs exhibit was hidden behind the metal pull of P26 and would not be noticeable to her even if P26 was opened. This was due to the way the drugs was concealed. This particular fact would distinguished this case with the rest of the decided authorities which support the legal proposition that the law will not protect anyone who claims to be innocent carrier when he had turned wilfully blind to the obvious. In *Public Prosecutor v Herlina Purnama Sari* for example, the drugs were in the luggage, packed in two boxes on top of all the clothings. Thus any one who opened the bag and checked would easily noticed the two boxes and would arose suspicion as to the content of the two boxes.

[33] The Federal Court in that case had also deliberated on the concept of wilful blindness which was summarised 'to be applicable to a situation where the circumstances are such as to raise suspicion sufficient for a reasonable person to be put on inquiry as to the legitimacy of a particular transaction'. Only when the situation are such, and that it will arise suspicion, then it becomes incumbent for that person to make necessary inquiries to satisfy himself as to the genuineness of the information given to him. It must be also pointed out here that, that person has no legal duty to do so, but if there is at least a reason to be suspicious it would be sufficient to ground a finding of wilful blindness.

[34] Back to the present facts, the respondent was told by her boyfriend Dan to send sample clothings to Kuala Lumpur. Dan was supposed to come along with her and on the way to Guangzhou to commence the journey to Kuala Lumpur which he had to back out, supposedly on some urgent basis. She was then told to carry the luggage carrying the sample of clothing to a person in Kuala Lumpur who would call her upon arrival. The drugs was completely

hidden in the luggage and not visible if one were to open it. In this regard the evidence of SP5, the Customs Officer on duty at LCCT at the material time, had explained how the drugs exhibit was completely hidden in P26. The witnesses for the prosecution had explained that to obtain the drugs exhibit he had to tear the cloth lining at the bottom part of the luggage (at pp 22–23) SP6 testified:

Q:	Bagaimana pembongkaran bermula?
A:	Saya keluarkan pakaian, saya dan Tuan Omar mula mengopek lantai berwarna hitam sehingga habis kerana sebelum ini saya kopek sedikit sahaja.
Q:	Tuan masih ingat berapa lapisan dalam beg tersebut?
A:	Ada pakaian dan kain berzip dan 2 batang besi beg tarik yang terpaksa ditarik.
Q:	Bermula dengan kopek kain yang berzip?
A:	Buka zip tidak perlu dikoyakkan dan terjumpa lantai plastik berwarna hitam.
Q:	Kemudian?
A:	Kopek sehingga habis.
Q:	Menanggalkan besi menggunakan apa?
A:	Tarik sekuat hati.
Q:	Tuan potong lapik menggunakan apa?
A:	Pisau dan screwdriver, kami cuba untuk mengopek.

[35] The respondent was not probed in cross-examination if she had any suspicion and had made attempt to check what is in P26 carefully. Because her narration was quite impeccable, and there was no room for suspicion that was revealed, to impute any suspicion or curiosity on her part, in order that the doctrine of wilful blindness can be invoked against her as decided in *Herlina*.

[36] Couple with such narration and what was even more telling was the fact that the respondent had upon arrival, chose to go through the red lane to declare her luggage before the Customs Officer instead of going through the green lane which requires no declaration. This was also evidenced in the picture of the respondent at the arrival in exh P17A(2–4) where she walked through the red lane knowing that she will have to disclose whatever she was carrying with her. This certainly does not show the conduct of a person with a guilty mind. Besides, all the relevant witnesses for the prosecution, had testified that the respondent was completely calm and had given her full co-operation during that time when she was apprehended at the LCCT upon her arrival, and had

only shown panic and worry only after she was told that they found the incriminating drugs in her bag.

[37] From all the above account we do not find error in the finding of the learned trial judge, that the respondent had rebutted the presumption of knowledge on a balance of probabilities. We find no error in that finding of facts and the reliance of the learned trial judge on the evidence of the respondent as a witness, which the learned trial judge found to be reliable. The finding of the learned trial judge in our view, is well supported by necessary evidence and inferences.

[38] We are mindful of the legal principle, that the appellate court should be slow to interfere with findings of fact as the trial judge being the trier of facts is always in the better position to assess the evidence and credibility of a witness (see *Low Kian Boon & Anor v Public Prosecutor* [2010] 4 MLJ 425; [2010] 1 MLRA 418). We on our part, do not find any appealable errors that warrant interference, on both facts finding and credibility of the respondent in her testimony. We agreed with the learned trial judge on the finding as they were finding made supported by clear evidence before him.

[39] Having perused through the appeal records before us, we agree with the learned trial judge, that it would not be safe to convict the respondent on the charge in the circumstances. We therefore dismissed the appeal of the learned DPP, and affirmed the order of acquittal and discharge, of the respondent made by the learned High Court judge.

Appeal dismissed.

Reported by Afiq Mohamad Noor